

Committee on Resources, Subcommittee on Energy & Mineral Resources

[energy](#) - - Rep. Barbara Cubin, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Witness Statement

**Written Testimony of
Cyrus J. Chino, Governor
Pueblo of Acoma**

On

**H.R. 1913
Pueblo of Acoma Subsurface Rights Legislation**

Before the

**Subcommittee on Energy and Mineral Resources
House Committee on Resources**

Thursday, September 13, 2001

I. INTRODUCTION

Madame Chairwoman and Members of the Subcommittee on Energy and Mineral Resources, my name is Cyrus J. Chino. I am the Governor of

the Pueblo of Acoma. On behalf of the Pueblo of Acoma, I thank you for this opportunity to testify in support of H.R. 1913.

The Pueblo of Acoma is a federally recognized Indian tribe located an hour's drive west of Albuquerque, New Mexico. We are a traditional people. We have occupied our lands and our old village, Acoma Sky City, for over a thousand years. In fact, Acoma Sky City is the oldest continuously inhabited city in the United States. Despite 500 years of contact with European culture, the people of Acoma have retained their language, culture and spiritual traditions.

I come before you today to ask that you support passage of H.R. 1913. This legislation will redress an historical injustice against Acoma. It will also enable Acoma to protect fully our sacred heritage and to regulate appropriately development on our reservation lands. Finally, it will address the concerns of the NZ Corporation (formerly known as New Mexico and Arizona Land Company) which currently owns large portions of the subsurface estate at Acoma, including areas of great spiritual importance and sensitivity to Acoma. See Acoma Indian Reservation Map, Attachment A. H.R. 1913 is consistent with the Federal trust responsibility to American Indians as well as Congressional policy in the area of Indian lands management.

Specifically, H.R. 1913 would direct the Secretary of the Interior: (1) to determine the extent and value of the nontribal ownership of subsurface rights within the boundary of the Acoma Indian Reservation; (2) to negotiate, upon completion of that valuation, an exchange with any willing nontribal owners of such rights for rights in Federal land within New Mexico identified by the Bureau of Land Management as available for disposal and of approximately the same value; and (3) to hold the acquired interests in land within the boundaries of the Acoma Indian Reservation in trust for the Pueblo of Acoma.

II. HOW ACOMA LOST ITS ANCESTRAL LAND IN THE FIRST PLACE

Prior to 1848, the Spanish and Mexican governments controlled the Southwest and recognized Acoma's aboriginal area as Acoma's territory, protecting Acoma's rights throughout that area. In 1848, when the United States acquired New Mexico from Mexico it promised, in accordance with the Treaty of Guadalupe Hidalgo (1848), that the Pueblo Indian tribes and other property holders would be "respected in their property." Congress also specifically recognized certain Acoma land claims by the Act of December 22, 1858, 11 Stat. 374. which federal courts have subsequently held did not limit Acoma's title to only those lands recognized therein.

Notwithstanding these Congressional actions, in 1866 Congress issued a Federal Charter to the Atlantic & Pacific Railroad that provided for a land grant out of the public domain to support the construction of a transcontinental rail and telegraph line. Act of July 27, 1866, 14 Stat. 292. NZ's parent company, the St. Louis & San

Francisco Railway Company received 1.2 million acres in fee, including large parts of what is now the Acoma Indian Reservation. Under the law, unextinguished Indian title lands could not be granted without "voluntary session" by the Tribe. However, U.S. land surveyors, in 1876 and, again in 1877, through mistake or bad intent, designated large amounts of tribal land, including land immediately below the mesa of Acoma Sky City, as within the public domain. This designation meant that the land was eligible for grant to the railroad company without first securing Acoma's permission.

In subsequent years, Congress recognized Acoma's larger land claims and acted to establish formally the Acoma Indian Reservation under Federal law. Part of the Acoma Indian Reservation was defined by the Act of May 23, 1928 (45 Stat.717). Subsequently, the United States purchased substantial land holdings from NZ, and took much of that land into trust for Acoma. However, for reasons unknown to Acoma, NZ was allowed to retain its subsurface rights on these lands.

As a result of this history, NZ holds 67,710 acres of subsurface rights within the Acoma Indian Reservation, including subsurface rights near Acoma Sky City.

III. NZ CLAIMS ACCESS RIGHTS TO MUCH OF THE ACOMA RESERVATION

When the United States acquired the surface rights from NZ, it provided the following exception for the subsurface rights:

"...Excepting and Reserving to said party [NZ] of the first part and its successors and assigns, all oil, gas and mineral rights underlying or appurtenant to said lands, together with the right of ingress and egress and of prospecting, developing and operating said lands therefore and removing the same therefrom, subject to such reasonable conditions respecting ingress and egress and the use of the surface of said lands as may be deemed necessary by the Secretary of the Interior."

Based on this language, NZ asserts a right of access to large portions of the Acoma Indian Reservation, including areas of great spiritual sensitivity. While Acoma would oppose any such efforts by NZ, in the end it might be a Federal court, and not Acoma itself, which would decide what would happen on Acoma land.

Needless to say, this legal situation, arising initially out of Federal government action, puts Acoma and NZ into conflicting positions. NZ has a good faith legal claim to develop its subsurface assets; at the same time such development would likely affect Acoma sacred properties and would involve subsurface assets that rightfully belong to Acoma in the first place. NZ believes that its rights have been unduly encumbered; while Acoma believes that its rights have been trampled upon. Both parties have come together to support a win-win solution--H.R. 1913. This solution, of necessity, involves the party originally responsible for the loss of Acoma land -- the Federal

government.

IV. BENEFITS OF H.R. 1913.

H.R. 1913 will address, through a voluntary land exchange, a number of issues, including:

- **Protection of Acoma sacred sites.** By unifying the surface and sub-surface estate at Acoma, the threat that Acoma sacred sites could be disturbed or destroyed by mineral exploration and extraction activity would be eliminated. The threat also to certain sacred "viewsapes", especially from Acoma Sky City, and to certain pilgrimage routes, would also be removed. Essentially, in a manner consistent with the Federal trust responsibility, Acoma's sovereignty within the boundaries of the Acoma Reservation would be more fully recognized and strengthened.
- **Righting of an historic wrong through the restoration of resources properly belonging to Acoma.** The consolidation of Acoma's surface and subsurface estate would correct the historic injustice of the loss of these lands that had belonged to Acoma for at least a thousand years before their taking by the United States. Passage of H.R. 1913 would be an example of the Congress living up to the Federal trust responsibility in the best possible way.
- **Protection of the interests of the private holder of the subsurface.** NZ has expressed its belief that, through Federal action, it has essentially lost the value of these land holdings, thus raising the issue of a Fifth Amendment taking. H.R. 1913 would protect the economic interests of NZ in accessing the value of the land granted it by the United States by allowing NZ to get disposable BLM land of equivalent value elsewhere.
- **Maintenance of the same value of land under Federal legal title.** Since H.R. 1913 provides that the land exchanged from the BLM disposable land list would be of the same value as the subsurface acquired in trust by the United States for Acoma, there is no net loss of land value under Federal legal title.
- **Elimination of an unnecessary obstacle to economic development for both NZ and Acoma.** For NZ, the lost value of the subsurface at Acoma will be freed up for other economic activity. Although Acoma has no plans to develop its subsurface resources, by consolidating those resources into the Acoma reservation Acoma can better regulate such development if, at some future date, it would be appropriate and not destructive.
- **Elimination of the possibility of costly litigation.** Should NZ seek to develop its subsurface rights, there would likely be

extensive litigation, not only between Acoma and NZ, but also including the United States. H.R. 1913 would eliminate the risk of such litigation by establishing a voluntary land exchange process for resolving this conflict.

V. OTHER CONGRESSIONALLY AUTHORIZED LAND AND MINERAL EXCHANGES

Under a wide variety of circumstances, the U.S. Congress has provided for land and mineral exchanges. In the Indian area, Congress has repeatedly passed legislation providing for exchanges and purchases of land interests for the benefit of Indian tribes in a manner similar to H.R. 1913. Set forth below are brief descriptions of examples of relevant Congressionally authorized land exchanges.

- **El Malpais National Monument and National Conservation Area.** In establishing the El Malpais National Monument, which lies immediately adjacent to Acoma, Congress specifically authorized the exchange of Federal and private mineral interests. 16 U.S.C. Section 460uu-44. Subsequently, exchanges and payments were made at El Malpais National Monument which included NZ holdings. In the same legislation, Congress also authorized land exchanges with the Pueblo of Acoma. 16 U.S.C. Section 460uu-45.
- **107th Congress -- Public Law 107-28.** Directs the Secretary of the Interior, acting through the Director of the Bureau of Land Management, to convey to the city of Carson City, Nevada, without consideration, all right, title, and interest of the United States to certain BLM property.
- **Umatilla Indian Reservation Consolidation.** Congress specifically authorized the Secretary of the Interior, for the purpose of effecting land consolidations between Indians and non-Indians within the reservation, to acquire by purchase, exchange or relinquishment any interests in land within the Umatilla Indian Reservation. 25 U.S.C. Section 463e.
- **Navajo-Hopi Land Settlement Act Land Exchanges.** The Navajo-Hopi Land Settlement Act authorized the Secretary to transfer certain land from the Bureau of Land Management to the Navajo Nation and, in order to facilitate such transfer, to exchange such lands for State or private lands of equal value or, if they are not equal, to equalize the values through the payment of money. 25 U.S.C. Section 640d-10.
- **General Law Providing for Exchanges of Private Lands included in Indian reservations for other lands.** 43 U.S.C. Section 149 specifically authorizes public-private land exchanges for Indian reservations established by executive order: "Any private land over which an Indian reservation has been extended by Executive

order, may be exchanged at the discretion of the Secretary of the Interior ... for vacant, nonmineral, nontimbered, surveyed public lands of equal area and value situated in the same State or Territory."

- **Rhode Island Indian Claims Settlement Act.** Under this Act, Congress authorized the Secretary of the Interior to purchase "private settlement lands" as part of a settlement of aboriginal land claims and other matters. 25 U.S.C. Section 1707.
- **Rattlesnake National Recreational Area.** In establishing the Rattlesnake National Recreational Area, Congress authorized the Secretary of the Interior to acquire, by exchange, gift or purchase "non-Federal lands, interests, or any other property. . . ." 16 U.S.C. Section 11-3(a). The Secretary of the Interior is even authorized, in consultation with the Secretary of Agriculture, to make exchanges with the owners of private lands or interests in exchange for bidding rights for competitive coal lease sales. 16 U.S.C. Section 460 11-3(b)-(e)
- **Chickasaw National Recreational Area.** Congress authorized the Secretary of the Interior to acquire land outside the boundary of the recreation area and exchange it for non-Federal lands within the boundaries. 16 U.S.C. Section 460hh-1.
- **Arapahoe National Recreation Area.** Congress authorized the Secretary of the Interior to acquire by exchange any non-Federal land, or interests therein, located within the Arapaho National Recreation Area. 16 U.S.C. Section 460jj-1(c).
- **Chattahoochee River National Recreation Area.** Congress authorized the Secretary of the Interior to acquire by exchange land within the recreation area. 16 U.S.C. Section 460ii-1(a).

VI. ACOMA EFFORTS TO UNIFY ITS SURFACE AND SUBSURFACE ESTATE

Since 1990, the Pueblo of Acoma and NZ have worked to resolve this issue. In 1990, the Acoma Tribal Council passed a resolution authorizing the tribal administration to negotiate with NZ and U.S. Department of Interior to acquire mineral rights within the reservation. Since then, each tribal administration has sought to complete such a negotiation.

Notably, by letter dated March 3, 1994, Ada E. Deer, then-Assistant Secretary of Indian Affairs, wrote the Acoma Governor and stated: "[T]he only available way to secure an outright acquisition would be through the three party land exchange transaction between the BLM, the NZ Company and the Pueblo [of Acoma]. We will be making a written request to the Secretary of the Interior to direct the BLM to begin entering into negotiations regarding the three party land exchange transaction." See Attachment B.

Although officials at the Bureau of Land Management have indicated general support for the idea of transfer of rights, they have indicated to Acoma that an exchange would only be carried out if directed and authorized by the Congress. For this reason, Acoma now comes before the Congress asking that it pass H.R. 1913 and make the Acoma Reservation whole.

VII. CONCLUSION

H.R. 1913 is win-win legislation that addresses and corrects an historic wrong against the Pueblo of Acoma. I urge this Committee to give its full support to passage of this important bill. Thank you for this opportunity to testify on this matter.

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